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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91199035
Party	Plaintiff D.C. One Wholesaler, Inc.
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Submission	Motion to Compel Discovery
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Signature	/Deborah M. Lodge/
Date	11/28/2011
Attachments	DCOneWholesalerMot Comp112811.pdf ( 8 pages )(287710 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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D.C. ONE WHOLESALER, INC.,	)	
	)	
Petitioner,	)	Opposition No. 91199035
	)	Ser. No. 77/92853
v.	)	Mark: I ♥DC
	)	
JONATHAN E. CHIEN dba	)	
I LOVE DC, LLC,	)	
	)	
Respondent.	)	
_____	)	
consolidated with	)	

_____	)	
D.C. ONE WHOLESALER, INC.,	)	
	)	
Petitioner,	)	Canellation No. 92053919
	)	Reg. No. 3759575
v.	)	Mark: I ♥DC
	)	
JONATHAN E. CHIEN dba	)	
I LOVE DC, LLC,	)	
	)	
Respondent.	)	
_____	)	

**PETITIONER'S MOTION AND BRIEF IN SUPPORT THEREOF  
TO COMPEL THE PRODUCTION OF RESPONDENT'S INITIAL DISCLOSURES**

Petitioner D.C One Wholesaler, Inc. ("D.C. One"), through its undersigned counsel, pursuant to 37 C.F.R. § 2.120(e), moves to compel Respondent Jonathan E. Chien dba I Love DC, LLC ("Mr. Chien") to make and serve his initial disclosures. The deadline to serve initial disclosures in these consolidated cases expired almost three months ago, yet Mr. Chien has still not made any disclosures. If his failure is left uncured, D.C. One will be prejudiced because it will have to incur the burden and expense of using tradition discovery to obtain the information that Mr. Chien is required to freely disclose. In further support of its motion, D.C. One states as follows:

1. The Trademark Rules require parties to disclose both (i) the name, address, and telephone number of each individual likely to have discoverable information that they may use to support their claims or defenses; and (ii) a copy (or description and location) of all documents and electronically stored information in the parties' possession, custody, or control that they may rely on to support their claims or defenses. 37 C.F.R. § 2.120(a); Fed. R. Civ. P. 26(a)(1)(A)(i)-(ii).

2. These disclosures must be made no later than thirty days after the opening date of discovery. 37 C.F.R. § 2.120(a)(2); *see also Kairos Inst. Of Sound Healing, LLC v. Doolittle Gardens, LLC*, 88 U.S.P.Q.2d (BNA) 1541 (T.T.A.B. 2008).

3. The Trademark Trial and Appeal Board's ("Board") April 28, 2011 order consolidating the above-captioned cases set June 30, 2011 as the opening date for discovery. This order also set Saturday, July 30, 2011 as the deadline by which the parties were to serve their initial disclosures in this matter. This deadline was extended as a matter of law, pursuant to 37 C.F.R. § 2.196, to Monday, August 1, 2011.

4. D.C. One timely served its initial disclosures containing the information required by 37 C.F.R. § 2.120(a) and Fed. R. Civ. P. 26(a)(1)(A)(i)-(ii) on Monday, August 1, 2011.

5. Mr. Chien, however, has not made any disclosures in these consolidated cases. Nor, has Mr. Chien requested an extension of the August 1, 2011 deadline.

6. On August, 26, 2011, D.C. One sent Mr. Chien's counsel a letter informing him that D.C. One has not received Mr. Chien's initial disclosures and requesting that he make those disclosures forthwith. A copy of this letter is attached hereto as **Exhibit A**. Mr. Chien has not responded to D.C. One's letter.

7. Again on November 23, 2011, D.C. One requested Mr. Chien's counsel to make his disclosures by 5:00 p.m. on Monday, November 28, 2011. As with D.C. One's prior request, Mr.

Chien has not responded and, to this date, has still not made any disclosures in these consolidated cases.

8. The Board has made clear that the reciprocal disclosure requirements of 37 C.F.R. § 2.120(a) are “integral to the efficient conduct of Board proceedings and not an obligation to be taken lightly by the parties.” *Kairos Instit. of Sound Healing, LLC*, 88 U.S.P.Q.2d at 1543. Indeed, the exchange of initial disclosures are intended to facilitate “the exchange of core information regarding the existence of and location of witnesses and documents,” to “lessen[ ] the expense of traditional discovery,” and to “promote[ ] early communication toward possible settlement.” *Id.* (internal citations omitted.) Mr. Chien’s failure to make any disclosures in these consolidated proceedings has undermined each of these purposes. Moreover, Mr. Chien’s failure has prejudiced D.C. One because, if its failure is not cured, D.C. One will incur the burden and expense of using traditional discovery to identify and locate the witnesses and documents that Mr. Chien may rely on in support of his defenses; information that Mr. Chien is required to freely disclose.

WHEREFORE, Petitioner D.C. One Wholesaler, Inc., respectfully requests that the Board enter an order, pursuant to 37 C.F.R. § 2.120(e), compelling Respondent Jonathan Chien dba I Love DC LLC to serve its initial disclosures within ten days or be subject to sanctions under 37 C.F.R. §

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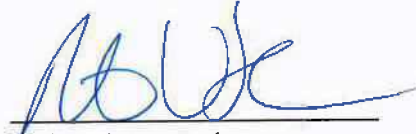
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2.120(g)(1) and Fed. R. Civ. P. 37(b)(2), including prohibiting Mr. Chien from opposing D.C. One's claims in these consolidated cases.

Dated: November 28, 2011  
Washington, D.C.

Respectfully submitted,



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Matthew Von Schuch  
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*Counsel for Petitioner D.C. One Wholesaler, Inc.*

### **CERTIFICATE OF SERVICE**

I hereby certify that on November 28, 2011, the foregoing motion was served, pursuant to the parties agreement, by electronic mail on Mr. Chien's counsel, Jason Lee, Lee, Lee & Associates, P.C., 2531 Jackson Road, Suite 234, Ann Arbor, Michigan 48103, Email: [jason@llapc.com](mailto:jason@llapc.com). In addition, a copy of the foregoing motion was mailed to Mr. Chien's counsel via U.S. Mail.



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Matthew Von Schuch

# **EXHIBIT A**

August 26, 2011

Matthew Von Schuch  
[MVonSchuch@PattonBoggs.com](mailto:MVonSchuch@PattonBoggs.com)

**VIA E-MAIL**

Mr. Jason Lee  
Lee, Lee & Associates, P.C.  
2531 Jackson Road, Suite 234  
Ann Arbor, Michigan 48103  
[jason@llapc.com](mailto:jason@llapc.com)

Re: D.C. One Wholesaler, Inc. v Jonathan E. Chien dba I Love DC, LLC,  
Opp. No. 91199035, Can. No. 92053919; U.S.P.T.O. Trademark Trial & Appeal Board

Dear Mr. Lee:

This letter constitutes our good faith effort, pursuant to 37 C.F.R. § 2.120(e)(1), to resolve your client's failure to make his initial disclosures in the above-referenced cases.

Mr. Chien is required by Federal Rule of Civil Procedure 26(a), as made applicable by 37 C.F.R. § 2.120(a), to disclose both (i) the name, address, and telephone number of each individual likely to have discoverable information that he may use to support his defenses in these cases; and (ii) a copy (or description and location) of all documents and electronically stored information in Mr. Chien's possession, custody, or control that he may rely on to support his defenses in these actions. Fed. R. Civ. P. 26(a)(1)(A)(i)-(ii). Mr. Chien was to serve these disclosures by Monday, August 1, 2011. *See* Order dated April 28, 2011 at pg. 3 (setting the deadline to serve initial disclosures for Saturday, July 30, 2011); 37 C.F.R. § 2.196 (extending the Saturday, July 30, 2011 deadline to Monday, August 1, 2011); Fed. R. Civ. P. 6(a)(1)(C) (same). More than three weeks have passed from that deadline. We still have not received your client's initial disclosures. Nor did you request an extension of this deadline.

Accordingly, we request that you provide us with your client's initial disclosures no later than Tuesday August 30, 2011. As we agreed during our Rule 26(f) conference, Mr. Chien's disclosures may be served via electronic mail on both Deborah Lodge ([dlodge@pattonboggs.com](mailto:dlodge@pattonboggs.com)) and Matthew Von Schuch ([mvonschuch@pattonboggs.com](mailto:mvonschuch@pattonboggs.com)). If we do not receive Mr. Chien's initial disclosures by Tuesday August 30, 2011, we reserve the right to move to compel Mr. Chien to produce his required disclosures, and to take any other action

Jason Lee  
August 26, 2011  
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afforded by the Trademark Trial & Appeal Board regulations and the Federal Rules of Civil Procedures.

Sincerely

A handwritten signature in black ink, appearing to read "M. V. Schuch", with a long horizontal flourish extending to the right.

Matthew Von Schuch  
Patton Boggs LLP